



Maryland Department of Transportation
The Secretary's Office

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Darrell B. Mobley
Acting Secretary

Leif A. Dormsjo
Acting Deputy Secretary

January 18, 2013

The Honorable Edward J. Kasemeyer
Chairman, Senate Budget and Taxation Committee
3W Miller Senate Building
Annapolis MD 21401-1991

The Honorable Norman H. Conway
Chairman, House Appropriations Committee
131 Lowe House Office Building
Annapolis MD 21401-1991

Dear Chairmen:

The purpose of this letter is to provide an update on the Baltimore Rail Intermodal Facility project that the Maryland Department of Transportation (MDOT) and CSX Transportation Inc. and its affiliates (CSX) are contemplating in southwest Baltimore City. On September 26, 2012, MDOT received approval from your committees for \$2,500,000 of state funds to complete project planning activities for a new intermodal facility at CSX's Mt. Clare Yard. Since that time, MDOT and CSX have executed the interim project agreement that outlines the roles and responsibilities of each party throughout the project development process (**Attachment 1**). Additionally, on October 18, 2012, both parties executed the grant agreement for the \$2,500,000 in planning funds (**Attachment 2**). MDOT also informed the U.S. Department of Transportation that we have ended investigations at the original four candidate sites and are focusing all planning activities to the Mt. Clare Yard site (**Attachment 3**).

With the appropriate agreements in place, the project planning process was initiated in November of 2012. This started with CSX, MDOT and the City of Baltimore beginning public outreach efforts in the communities immediately surrounding the Mt. Clare Yard. At the request of Baltimore City Councilman Edward Reisinger, outreach efforts are focused on regularly scheduled community and business association meetings. To date, we have met with three community association groups and one business association group. Routine outreach efforts will continue throughout the remainder of the planning phase and into the design and construction phases. In January, the outreach efforts will also broaden to include stakeholders outside of the immediate surrounding area such as St. Agnes Hospital and other nearby institutions.

Concurrent with the public outreach efforts, engineering and environmental work is also progressing at the Mt. Clare Yard site. This work is critical to the overall development process because it will solidify the layout of the facility, identify environmental features and quantify potential impacts, and provide a more refined project cost estimate. The planning work initiated in November is expected to be completed in the spring of 2013. At that time, CSX and MDOT will review updated project cost projections and collectively decide whether to move forward with the permitting and construction phases of the project.


My telephone number is 410-865-1000
Toll Free Number 1-888-713-1414 TTY Users Call Via MD Relay
7201 Corporate Center Drive, Hanover, Maryland 21076

The Honorable Edward J. Kasemeyer
The Honorable Norman H. Conway
Page Two

Consistent with the terms of the interim project agreement, MDOT has included \$30,000,000 in construction funds in the final Consolidated Transportation Program for fiscal year (FY) 2013-2018. This funding is spread out in two \$15,000,000 installments in FY14 and FY15. While the construction funds have been programmed for FY14 and FY15, they will not be available to CSX for reimbursement until CSX achieves certain project milestones and both MDOT and CSX execute a final construction agreement. In order for the construction agreement to be executed, the project team must first complete the permitting phase which is estimated to occur in the fall of 2013.

MDOT appreciates your interest in this important infrastructure project and will continue to update the General Assembly at major project milestones. If you have additional questions or concerns, please do not hesitate to contact Mr. Leif Dormsjo, MDOT's Acting Deputy Secretary, at 410-865-1006. Of course, you should always feel free to contact me directly.

Sincerely



Darrell B. Mobley
Acting Secretary

cc: The Honorable Thomas V. "Mike" Miller, Jr., President of the Maryland Senate
The Honorable Michael E. Busch, Speaker of the Maryland House of Delegates
Members of the Budget Committees
Members of Legislative Districts 40 and 44
Mr. Leif Dormsjo, Acting Deputy Secretary, Maryland Department of Transportation

INTERIM PROJECT AGREEMENT

**Maryland Department of Transportation,
CSX Intermodal Terminals, Inc.
and
CSX Transportation, Inc.
regarding
the Baltimore Rail Intermodal Facility**

The purpose of this Agreement is to further the goals of the Memorandum of Understanding ("MOU") dated May 29, 2009, between CSX Transportation, Inc. ("CSXT") and the Maryland Department of Transportation ("MDOT"), and to establish a mutual understanding among MDOT, CSXT, and CSX Intermodal Terminals, Inc. ("Intermodal", and collectively with MDOT and CSXT, the "Project Parties") regarding the development of the Baltimore Rail Intermodal Facility project ("Project") contemplated at an existing CSXT rail yard in Baltimore City, Maryland ("Site"). The Project involves constructing a new intermodal container transfer facility ("Facility") at the Site that is capable of handling double-stack intermodal trains. CSXT will own the Site and will lease it to Intermodal. Intermodal will own the improvements on the Site and will operate the Facility.

The Project Parties anticipate that the Project will be organized in phases as described in this Agreement. This Agreement sets forth an arrangement by which MDOT will contribute funding towards the Phase 1 planning efforts and Phase 2 activities, including permitting. This Agreement also provides the framework by which the State will provide funding for Phase 3 construction. Finally, this Agreement establishes certain anticipated Phase 4 operating procedures. The funding commitments of the State of Maryland ("State") as described in this Agreement are subject to appropriation by the Maryland General Assembly and approval by the Maryland Board of Public Works. CSXT's and Intermodal's funding and other commitments to the Project are conditioned upon obtaining approval from the CSX Corporation Board of Directors.

Accordingly, the Project Parties hereby agree as follows regarding the development, implementation, and construction of the Project:

PHASE 1 Planning, Engineering and Design Target Timeline: October 2012 – April 2013	
<u>Planning and Engineering</u>	<ul style="list-style-type: none">▪ Once the Initial Funds (as defined below) have been made available to Intermodal, Intermodal shall begin to plan, design, and engineer the Facility and perform the other Phase 1 activities.▪ Intermodal shall design the Facility to support a planned capacity of 85,000 lifts per year.▪ Intermodal shall, within six (6) months of MDOT making \$2,500,000 ("Initial Funds") available to Intermodal for all Phase 1 and 2 Activities (defined below), complete approximately fifty percent (50%) design plans ("Plans") sufficient to enable Intermodal to obtain a guaranteed maximum price design/build contract for the construction of the Facility.▪ Intermodal will share the Plans with MDOT. MDOT shall have an opportunity to review and comment on the Plans.▪ Intermodal may revise the Plans, as appropriate, in response to comments from MDOT. Intermodal shall provide MDOT a written response on all comments not integrated into the Plans.

Phase 1 Property Acquisition

The properties described in this section are hereinafter collectively referred to as the "Project Property."

- **Private Land:** CSXT shall have sole responsibility for acquiring real property owned by private third parties for use in connection with the Project ("Private Land"), as and when provided in this Agreement. During Phase 1, CSXT will seek to negotiate option contracts with private landowners. Such option contracts are expected to include (i) rights of entry in favor of CSXT to conduct necessary site investigations on the Private Land, and (ii) the private landowner's agreement to cooperate in obtaining permits and other approvals required for the Project.
- **State Land:** The State currently holds fee simple title to real property at the Site for use in connection with the Project ("State Land"). MDOT will seek any necessary Maryland Board of Public Works approval and facilitate the contribution of the State Land to CSXT at no or nominal cost and in accordance with the construction schedule for the Project through fee simple title, or such other forms, such as by easement or long-term ground lease, acceptable to CSXT. To facilitate environmental and other due diligence investigations and studies of the State Land, the State and CSXT shall enter into a mutually acceptable right of entry and access agreement and binding confidentiality agreement.
- **City Land/NPO Land:** MDOT shall work with Baltimore City ("City") and not-for-profit organizations to facilitate the contribution of their land to CSXT for use in connection with the Project and in accordance with the construction schedule through fee simple title, or such other forms, such as by easement or long-term ground lease, acceptable to CSXT. The land owned by the City is referred to herein as the "City Land," and the land owned by not-for-profit organizations is referred to herein as the "NPO Land."
- **CSXT Land:** CSXT shall contribute land at the Site for use in connection with the Project ("CSXT Land"), as and when provided in this Agreement.

Investigation and Evaluation

- **CSXT Land and Private Land:** CSXT will (i) evaluate the suitability of the CSXT Land and the Private Land for Project use, including, but not limited to, appropriate environmental due diligence, as needed, and (ii) determine the projected cost to remediate any environmental hazards, as necessary, together with costs related to the constructability of the CSXT Land and the Private Land consistent with the intended use of the Site ("Approximate Remediation Cost").
- **State Land:** The State will provide a right of entry to CSXT to evaluate the suitability of the State Land and to conduct all appropriate inquiry into environmental conditions, as needed, on the State Land to determine the Approximate Remediation Cost for the State Land.
- **City Land and NPO Land:** MDOT shall coordinate with the City and the owners of the NPO Land to facilitate CSXT's access to the City Land and NPO Land so as to allow CSXT to evaluate the suitability of the City Land and the NPO Land and to conduct the appropriate environmental investigation to determine (i) the nature and extent of any environmental contamination present on the City Land and the NPO Land, and (ii) the Approximate Remediation Cost for the City Land and NPO Land.

Environmental Remediation

The estimated cost of environmental remediation for all Private Land, State Land and City Land will be determined and included in the Initial Cost Projection (defined below).

CSXT Priority Projects

- Within sixty (60) days of the effective date of this Agreement, CSXT shall identify priority projects in Maryland having an aggregate estimated construction cost in excess of \$15,000,000 that are not related to the Project (the "Other Projects") and provide such list to MDOT. Based on this list, MDOT and CSXT will mutually agree on which Other Projects will be selected for federal funding.
- MDOT shall use its good faith efforts to obtain a federal grant in excess of \$15,000,000 to fund CSXT's obligations for such Other Projects.
- Should MDOT identify or secure federal funds that do not require a formal grant application, but may still be utilized for funding CSXT's commitment and obligations with respect to financing the Other Projects, those funds shall be applied against the overall federal grant that is pursued by MDOT for the Other Projects.
- CSXT will perform the engineering and design necessary for the grant application. MDOT will assemble the application and provide the required public sponsorship.
- MDOT shall make good faith efforts to secure the federal funds for the Other Projects no later than December 31, 2013.
- Should the Project not go forward, but federal grant funds have been obtained and used for the Other Projects, the amount of the federal grant will be credited against the MARC Mutually Beneficial Projects Account for the period 2015-2020.

Status of Clearance Projects

CSXT shall provide written quarterly updates to MDOT summarizing the status of the Clearance Projects (as defined in Phase 3).

Permits and Approvals:

- Intermodal shall endeavor to obtain the legal right and authority to pursue the permits and approvals for the Project for all of the Project Properties. To the extent legally permissible, the State shall give Intermodal the authority to apply for permits and approvals affecting the State Land in Intermodal's name. If not legally permissible, the State shall cooperate with Intermodal in applying for such permits and approvals.
- The State shall recommend that the City give Intermodal the authority, to the extent legally permissible, to apply for permits and approvals affecting the City Land in Intermodal's name.

Use of Initial Funds

- MDOT shall undertake the legislative review process to make the Initial Funds available to Intermodal by October 15, 2012. The Initial Funds will be subject to a mutually agreeable separate grant agreement.
- The Initial Funds shall be available to Intermodal on a reimbursable basis to offset the costs of the following activities related to the Project (collectively, the "Phase 1 and 2 Activities"):
 - Project planning and design;
 - Engineering and surveying;
 - Obtaining permits and other approvals and related activities;
 - Traffic and noise studies; and
 - Environmental studies.
- Intermodal will submit periodic bills, not more often than once per month, and MDOT will pay all bills within thirty (30) days of receipt of the same.
- CSXT and Intermodal shall be responsible for all Phase 1 and Phase 2 costs above and beyond the Initial Funds.

Phase 1 Cost Projection and Termination Right

- All Phase 1 activities shall be completed within six (6) months of the State making the Initial Funds available to Intermodal for all Phase 1 and 2 Activities.
- Intermodal will calculate the projected cost for completion of the Project ("Initial Cost Projection") and deliver the Initial Cost Projection to the State. The Initial Cost Projection will address all actual and anticipated costs and expenses of the Project, including, but not be limited to, costs and expenses for: Project design, engineering and construction costs; completing the Plans; acquiring the Private Land and the NPO Land; environmental testing and estimated remediation costs; and costs associated with obtaining permits and approvals.
- Within thirty (30) days of receipt by the State of the Initial Cost Projection, each of the Project Parties shall have the unilateral right by written notice to the other to terminate this Agreement and cease all further activities related to the Project. Except for the obligations in existence as of the date of such termination, neither party shall incur any liability if it chooses to exercise its termination right.

PHASE 2
Permitting and Other Approvals, Confirmation of Funding
Target Timeline: April 2013 – September 2013

If none of the Project Parties exercises the Phase 1 termination right, the Project Parties will undertake the following activities during Phase 2.

Permitting and Approvals

- Intermodal shall endeavor to obtain all applicable federal, state, and local permits and approvals for the Project.
- MDOT shall assign a project manager to assist in the efforts to obtain the permits and approvals as needed to ensure their timely receipt.
- The Project Parties shall cooperate to obtain the required City approvals for the Project.

Community Enhancements

- The Project Parties, the City and the public shall endeavor to reach an agreement on the nature and extent of community enhancement measures needed in and around the Site ("Enhancement Activities") prior to the start of construction of the Facility.
- The Project Parties anticipate the cost for the Enhancement Activities ("Enhancement Cost") will be no more than \$2,000,000.

Property Acquisition

CSXT shall obtain binding commitments or other agreements acceptable to CSXT from the owners of the State Land, City Land, NPO Land, and Private Land sufficient to assure CSXT that it will be able to timely acquire or receive fee simple title, or such other interest, such as by easement or long-term ground lease, in such properties acceptable to CSXT.

Environmental Remediation

- MDOT shall be responsible for remediating environmental contamination on the State Land and the City Land, as necessary, consistent with the intended use of the Site. The State may begin remediation activities on the State Land and the City Land, if necessary, during Phase 2 at the State's option.
- CSXT shall be responsible for remediating environmental contamination on the CSXT Land, Private Land and NPO Land as necessary, consistent with the intended use of the Site and the Project construction schedule. CSXT may begin remediation activities on CSXT Land, if necessary, during Phase 2 at CSXT's option.

Confirmation of Phase 3 Funds

- MDOT shall commit \$30,000,000 in State funds to support construction-related activities for the Facility ("Phase 3 Funds") in the FY2013-2018 Consolidated Transportation Program, to be approved in January 2013. The State will program the funds over a two year period. Each installment of \$15,000,000 will require independent approval through the Maryland General Assembly appropriation process.
- The State will make the first \$15,000,000 installment of the Phase 3 Funds available to CSXT and Intermodal on a reimbursable basis beginning July 1, 2013.
- The remaining \$15,000,000 in State funds will be made available to CSXT and Intermodal on a reimbursable basis beginning July 1, 2014.
- CSXT and Intermodal shall be responsible for all Phase 3 costs above and beyond the State's \$30,000,000.

Other Projects Funds

As part of the Phase 2 activities, MDOT shall use good faith efforts to secure the federal funds in excess of \$15,000,000 for the Other Projects by December 31, 2013. This Phase 2 activity shall be deemed completed if and when the federal funding is either obtained or the State notifies CSXT that, despite the State's good faith efforts, the federal funds for the Other Projects will not be obtained.

Form of Definitive Documentation

During Phase 2, the Project Parties shall endeavor to substantially complete, to the extent practicable, the negotiation of the terms and form of the definitive construction agreement and supporting documentation, as well as the requisite conveyance, or acceptable alternative documents for the State Land, City Land, Private Land and the NPO Land as described in Phase 1 (collectively, the "Definitive Documentation").

Phase 2 Adjusted Cost Projection and Termination Rights

- Upon the later of (i) September 1, 2013, or (ii) the completion of the Phase 2 activities described above (including, but not limited to, obtaining final, non-appealable permits and approvals for the Project, and the determination of all needed community enhancement measures), Intermodal will update and adjust the Initial Cost Projection, as necessary, based on the latest information then available ("Adjusted Cost Projection"). The Adjusted Cost Projection will include, but not be limited to, costs and expenses to be incurred in connection with the Project, such as: Project design, engineering and construction costs; property acquisition, remediating the Project Property; Community Enhancements; activities related to permitting and other approvals; and the cost of the Private Land and other properties, as necessary.

- Within forty-five (45) days of the receipt of the Adjusted Cost Projection, each of the Project Parties shall have the unilateral right by written notice to the other either to terminate this Agreement and cease all activities related to the Project or mutually agree to proceed to Phase 3 (if such written notice is not given within such 45 day period, the Project Parties shall be deemed to have elected to proceed to Phase 3 as of the end of such time period) (the "Proceed Date"). Except for the obligations in existence as of the date of such termination, neither party shall incur any liability if it chooses to exercise its termination right.
- In addition to the termination right set forth in the preceding paragraph, each of the Project Parties shall have the unilateral right by written notice to the other to terminate this Agreement and cease all activities related to the Project if (i) federal funding for Other Projects is not secured by December 31, 2013 or (ii) if the Phase 2 activities are not completed by March 31, 2014. A Project Party shall exercise such termination right, if at all, before the completion of the Phase 2 activities.

PHASE 3
Property Acquisition and Construction
Target Timeline: September 2013 – May 2015

The Project Parties shall, provided they have not timely exercised any of the termination rights set forth in Phase 2, finalize, execute, and deliver the Definitive Documentation within 45 days after the Proceed Date. Each of the Project Parties shall have the right, by written notice to the others, to terminate this Agreement and cease all activities related to the Project if the Definitive Documentation is not finalized and fully executed and delivered within 45 days after the Proceed Date.

The elements described below reflect certain but not all of the terms the Project Parties expect to be part of the Definitive Documentation to be negotiated during Phase 2.

Environmental Remediation

Upon execution and delivery of the Definitive Documentation, the Project Parties shall promptly commence and diligently pursue all environmental remediation at the Site until such remediation is complete.

Notice to Proceed

Intermodal shall issue a notice to proceed to the general contractor for the Project on the later to occur of the following: (a) January 1, 2014, and (b) 30 days after the execution and delivery of the Definitive Documentation.

Phase 3 Property Acquisition

Project Property: All property beyond the CSXT Land that is required in connection with the Project shall be secured through conveyance, easement or long-term ground lease agreements (as described in Phase 1) during Phase 3 and prior to the start of construction.

Equipment

Intermodal shall use modern zero-emissions electric wide span cranes ("Cranes") at the Facility. Intermodal is responsible for ordering the Cranes in a timely manner such that the delivery of the Cranes does not delay the opening and full operation of the Facility.

Minority Business Enterprise

The construction contract shall set goals for Minority Business Enterprise (MBE) participation.

Labor

A project labor agreement (PLA) shall be utilized for construction of the Facility.

Construction of the Facility

- Intermodal shall have responsibility for construction, management and oversight of the contractor.
- Construction shall be completed within twenty-four (24) months of execution and delivery of the Definitive Documentation, subject to extension for delays arising out of force majeure, environmental remediation activities, or MDOT's or the State's failure to timely satisfy their obligations under the Definitive Documentation (the "Construction Period").

Rent Relief

Pursuant to the terms of the existing lease agreement between Intermodal and the State for the use of the Seagirt Intermodal Container Transfer Facility, as amended (the "Lease"), Intermodal's annual rent payment increases on November 4, 2014 ("Lease Payment Increase Date"). If the Project Parties proceed with the Project at the end of Phase 2, and construction at the Facility is not completed by the Lease Payment Increase Date, the amount of rent due from Intermodal pursuant to the Lease shall remain the same as the amount of rent due on the day immediately preceding the Lease Payment Increase Date through October 31, 2015.

Tax Abatement and other Benefits

The State shall assist Intermodal and its affiliates in maximizing tax abatements and credits, Brownfield incentives, and utility discount opportunities that may be available to Intermodal and its affiliates based on the location of the Facility.

Offsite Improvements

CSXT shall finance, design, engineer and construct the eight remaining National Gateway clearance projects located in the State of Maryland listed below (collectively, "Clearance Projects"):

- (1) Catoctin Tunnel – Catoctin, MD (Metropolitan Sub)
- (2) Point of Rocks Tunnel – Point of Rocks, MD (Metropolitan Sub)
- (3) Harpers Ferry Tunnel – Sandy Hook, MD (Cumberland Sub)
- (4) Germantown Pedestrian Bridge – Germantown, MD (Metropolitan Sub)
- (5) Deer Park Drive – Washington Grove, MD (Metropolitan Sub)
- (6) Jessup Road – Jessup, MD (Capital Sub)
- (7) Kenilworth Ave – Hyattsville, MD (Capital Sub)
- (8) Baltimore Washington Parkway Rt 295 – Hyattsville, MD (Capital Sub)

CSXT shall issue a notice to proceed for the construction of one or more of the Clearance Projects by January 1, 2014, and shall endeavor to complete construction of the Clearance Projects prior to the opening of the Facility.

Phase 3 Funds

- Following the execution of the Definitive Documentation, the Phase 3 Funds shall be available to CSXT and Intermodal on a reimbursable basis to offset the costs of the following activities related to the Project (collectively, the "Phase 3 Activities"):
 - Site preparation work, including clearing and grading;
 - Construction of the Facility;
 - Track, signals, utilities, gates, structures and stormwater management facilities located within the footprint of the Site;
 - Energy substations needed to power the Facility;
 - Lead track and switching yards that directly serve the Facility;
 - Equipment to be used within the footprint of the Facility, including the Cranes and stackers;
 - Enhancement Activities (not to exceed the Enhancement Cost); and
 - Other related costs as mutually agreed upon.
- Intermodal shall provide quarterly updates to MDOT on the progress of the construction of the Facility.

Cost Savings

The Project Parties shall pursue all reasonable cost saving measures.

**PHASE 4
Operations
Target Timeline: Beginning May 2015**

The elements described below reflect certain, but not all, terms the Project Parties have agreed upon and expect to be a part of the Definitive Documentation to be negotiated during Phase 2.

Port of Baltimore Service

- When there is enough volume to create a 3,000 foot train on a daily basis, Intermodal shall offer daily single-stack train service between the Facility and the Port of Baltimore's Seagirt Marine Terminal.
- Until such time, Intermodal will offer interim service based on existing demand.

Clean Truck Program

MDOT and Intermodal shall consider the development of a clean truck operating plan. Topics that could be addressed in a plan include the latest policies and technological advances related to clean trucking, and ways in which they can reasonably be incorporated into the operation of the Facility. The plan, if developed, may also address methods by which Intermodal will educate its customers on the most current private, local, state and federal incentive programs available to them to upgrade, retrofit or replace their fleet with newer, cleaner trucks.

Operation of the Facility

Intermodal shall be responsible for all costs and management responsibilities associated with the ongoing maintenance and operations of the Facility.

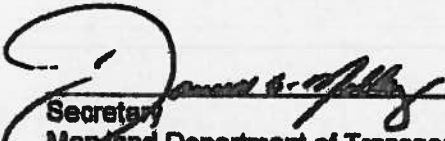
Labor

Non-management employees of Intermodal shall be union labor.

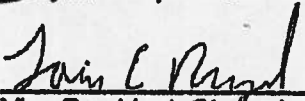
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Execution

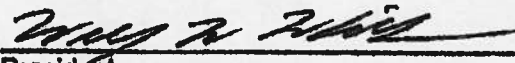
The terms and conditions outlined in this Agreement are effective upon execution by CSXT, Intermodal, and MDOT, on behalf of itself and the State of Maryland. The parties hereto, being duly authorized, have executed this Agreement as of the date set forth below.


Secretary
Maryland Department of Transportation

September 27, 2012


Vice President, Strategic Infrastructure Initiatives
CSX Transportation Inc.

September 12, 2012


President
CSX Intermodal Terminals

September 12, 2012

**GRANT AGREEMENT
AMONG
THE MARYLAND DEPARTMENT OF TRANSPORTATION,
CSX TRANSPORTATION, INC.
AND
CSX INTERMODAL TERMINALS, INC.**

THIS GRANT AGREEMENT (this "Agreement") is entered into as of the 18th day of October, 2012, by and among the MARYLAND DEPARTMENT OF TRANSPORTATION, an agency of the State of Maryland (the "Department"), CSX TRANSPORTATION, INC. ("CSXT") and CSX INTERMODAL TERMINALS, INC. ("Intermodal", collectively with CSXT known as the "Grantee").

RECITALS

WHEREAS, the Department and CSXT entered into a Memorandum of Understanding on May 29, 2009, regarding the National Gateway and the Port of Baltimore; and

WHEREAS, the Department and the Grantee entered into an Interim Project Agreement related to the Baltimore Rail Intermodal Facility (the "Project") on September 27, 2012, attached hereto as Exhibit A (the "Interim Project Agreement");

WHEREAS, the Interim Project Agreement identified the roles and responsibilities of the Department and the Grantee related to the planning, permitting, construction and operation phases of the Project at CSXT's Mount Clare Yard in Southwest Baltimore City and established target timeframes for completing each phase; and

WHEREAS, the Maryland Secretary of Transportation is authorized, under Section 2-103(i) of the Transportation Article of the Annotated Code of Maryland, as amended ("Transportation Article"), to make grants-in-aid, to the extent provided by the budget of the State of Maryland (the "State" or the "State of Maryland"), to any person for any transportation related purpose.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. The above recitals are re-affirmed and incorporated herein by reference.
2. The Department hereby grants to the Grantee up to Two Million Five Hundred Thousand Dollars (\$2,500,000) (the "Grant"). These funds shall be available to the Grantee on a reimbursable basis for activities related to the following elements of the Project:

- Project planning and design;
- Engineering and surveying;
- Obtaining permits and other approvals and related activities;
- Traffic and noise studies; and
- Environmental studies.

The Grantee shall be responsible for funding all other costs related thereto.

The Department and Grantee agree and acknowledge that Grantee has not provided or will not provide any specific service or property to the Department in exchange for the Grant, and the Department is not a customer or potential customer of the Grantee within the meaning of Treasury Reg. §1.118-1 with respect to the Grant.

3. Payments for the Grant shall be made on a reimbursable basis by the Department to the Grantee upon the Grantee's submission of periodic invoices. The invoices shall clearly indicate the date, purpose and nature of all costs for which the Grantee is seeking reimbursement. The invoices shall be submitted no more frequently than a monthly basis to:

Mr. Bradley M. Smith
Office of Freight and Multimodalism
Maryland Department of Transportation
7201 Corporate Center Drive
P.O. Box 548
Hanover, Maryland 21076
bsmith9@mdot.state.md.us

The invoice shall be submitted to the Department no earlier than by the day after (and no later than ninety (90) days following) the day of payment by the Grantee of the expense for which the requested Grant payment shall apply.

4. The Department has obtained the requisite approvals from the General Assembly as well as all other required approvals and is authorized to provide the Grant to the Grantee in the current fiscal year in accordance with the procedures set forth in this Agreement. However, all payments hereunder by the Department to the Grantee are subject to the

budgetary and appropriation requirements of Section 3-216(d)(2) of the Transportation Article.

- 5. The Department shall make payment to the Grantee with respect to each invoice documenting actual costs incurred for the Project for activities set forth in Section 2 within thirty (30) days of receipt of such invoice. Documentation of activities shall include an expenditure report for the work activities being invoiced along with a short description of the work performed. Invoices shall include a statement certifying that costs contained in the invoices represent actual Project costs and that such costs have not previously been submitted for reimbursement.**
- 6. The Grantee shall comply with all applicable Federal, State and local laws in expending Grant funds and in fulfilling its obligations under this Agreement.**
- 7. The term of this Agreement shall commence upon signing hereof and shall terminate when all payments of the Grant, as defined in Section 3, have been made. The provisions of Sections 8, 9, 10 and 12 shall survive the term of the Agreement.**
- 8. The Department reserves the right to suspend or terminate all or part of the financial assistance herein provided and to terminate this Agreement, in whole or in part, if the Grantee breaches any material terms of this Agreement and fails to cure that breach within 60 days after receiving written notice from the Department setting forth the acts or omissions that constitute a breach.**

Effective upon the date this Agreement is terminated, the Department shall have no obligation to reimburse the Grantee for any costs incurred after such date. The Department shall be obligated to reimburse the Grantee for obligations properly incurred by the Grantee prior to the effective date of termination of this Agreement if such obligations are unable to be canceled. The payment of Grant funds by the Department, or the closing out of the Department's financial participation under this Agreement, shall not constitute a waiver of any claim that the Department may otherwise have arising out of this Agreement. If it is determined that funds that were reimbursed to the Grantee were not eligible for reimbursement under this Agreement, the Grantee shall promptly remit such amount to the Department. The Grantee's agreement to remit any excess

Grant funds to the Department shall survive the termination of this Agreement. In addition to the Department's remedies under this Section 8, the Department may proceed to protect and enforce all rights available to it, by suit in equity, action in law or by any other appropriate proceedings, any or all of which may be exercised contemporaneously with each other and all of which rights and remedies shall survive the termination of this Agreement.

9. The Grantee shall maintain separate and complete accounting records that are consistent with generally accepted accounting procedures and accurately reflect expenditures of Grant funds for the Project. The Grantee's accounting records shall be maintained for a period of three (3) years after the termination of this Agreement. The records of the Grantee must be in sufficient detail to determine the nature of the cost incurred or expenditure made by the Grantee for the Project.
10. In addition to any other rights set forth in this Agreement, the Department shall have the right at its sole cost and expense to perform final audits of the Grant provided under this Agreement. Any final audit shall commence within three years (3) years of the end of the term of this Agreement. If it is reasonably determined by the department pursuant to an audit that funds that were reimbursed to the Grantee were not eligible for reimbursement under this Agreement, the Grantee shall promptly remit such amount to the Department. The Grantee's covenant to repay any excess Grant payments shall survive the termination of this Agreement.
11. This Agreement may be modified only by written instrument, executed by the Department and the Grantee.
12. The performance of work under this Agreement may be terminated by the Department in accordance with this clause in whole, or from time to time in part, whenever the Department shall determine that such termination is in the best interest of the Department. The Department will pay all reasonable costs associated with this Agreement that Grantee has incurred up to the date of termination and all reasonable costs associated with termination of this Agreement. However, Grantee shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and

obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

13. The Grantee shall defend, indemnify, and hold harmless the Department, its officers, agents, and employees from all suits, actions, liability, or claims of liability (including reasonable attorneys' fees) that may arise in connection with the Grantee's obligations under this Agreement. The Department shall not be subject to any obligations or liabilities by contractors of the Grantee absent its written consent.
14. Grantee hereby agrees to the statement set forth below and shall cause all contracts with third party contractors (if any) to contain an equivalent statement:

No member, officer, or employee of Grantee during his or her tenure with Grantee shall have any interest, direct or indirect, in this Agreement or the proceeds thereof in pursuit of the Project.
15. No right, benefit or advantage inuring to the Grantee under this Agreement may be assigned and no burden imposed on the Grantee hereunder may be delegated or assigned without the prior written approval of the Department.
16. The parties hereby agree that this Agreement shall be construed in accordance with the law of the State of Maryland.
17. As an inducement to the Department to make the Grant, the Grantee hereby certifies to the Department that:
 - a. any resolution, or other action which may be required has been adopted, or taken as an official act of the Grantee's governing body, authorizing the execution and delivery of this Agreement by the Grantee in such manner and form as to comply with all applicable laws to make this Agreement a valid and legally binding agreement of the Grantee; and
 - b. Grantee, to its information, knowledge and belief, is not in arrears with respect to the payment of any moneys due and owing the State of Maryland, or any department or unit thereof, including, but not limited to, the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Agreement.

18. The Department and the Grantee certify that they prohibit, and covenant that they will continue to prohibit, discrimination on the basis of:

- a. age, ancestry, color, creed, marital status, national origin, race or religious or political affiliation, belief or opinion,**
- b. sex or age, except when age or sex constitutes a bona fide occupational qualification; or**
- c. the physical or mental disability of a qualified individual with a disability.**

In the event of a dispute or claim involving discrimination, the Department and the Grantee will submit to the other party its anti-discrimination policies and procedures.

19. The Department and the Grantee shall comply, as required, with the State's policy concerning drug and alcohol free workplaces, as set forth in EXECUTIVE ORDER 01.01.1989.18 and COMAR 21.11.08, throughout the term of this Agreement.

20. It is specifically agreed between the Department and the Grantee that it is not intended by any of the provisions of this Agreement to create in any entity, third party beneficiary status in connection with the performance of the obligations herein.

21. If any provision of this Agreement is held to be illegal, invalid or unenforceable by a court of competent jurisdiction, the parties shall negotiate, in good faith, a replacement provision as close in meaning as reasonably possible to the original, but without the illegal, invalid or unenforceable provision. If the parties are unable to negotiate a replacement provision:

- a. such illegal, invalid or unenforceable provision shall be fully severable;**
- b. this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and**
- c. the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.**

22. This Agreement may be executed in a number of identical counterparts, each of which shall constitute an original and all of which shall constitute, collectively, one agreement.

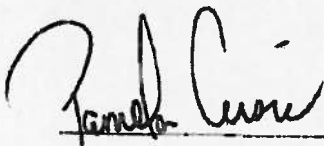
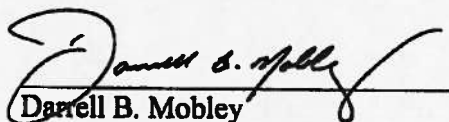
23. Response to Requests from the Maryland Commission on Civil Rights. As a condition of entering into this Agreement, upon the Maryland Commission on Civil Rights' request, and only after the filing of a complaint against the Grantee under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended, the Grantee agrees to provide within sixty (60) days after the request a complete list of the names of all subcontractors, vendors, and suppliers that the Grantee has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the dollar amount paid by the Grantee on each subcontract or supply contract. The Grantee further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigations that are requested by the State. The Grantee understands that the violation of this clause is a material breach of this Agreement and may result in Grant termination, disqualification by the State from participating in State contracts, and other sanctions.
24. Failure of either party to insist upon strict performance of any provision of this Agreement, or to exercise any right or remedy or option provided herein, will not be construed as a waiver of the right in the future to insist upon strict performance of any provision or to exercise any right, remedy or option provided herein. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the waiver is to be enforced.
25. The Grantee shall use commercially reasonable efforts to seek Minority Business Enterprise (MBE) participation for work that will be performed pursuant to Section 2 of this Agreement.
26. This Agreement shall inure to and be binding upon the parties hereto, their agents, successors and, to the extent an assignment has been approved pursuant to Section 13 of this Agreement, their assigns.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

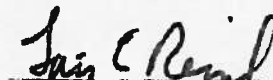
WITNESS:

MARYLAND DEPARTMENT OF
TRANSPORTATION


_____
Darrell B. Mobley
Acting Secretary

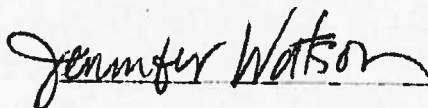
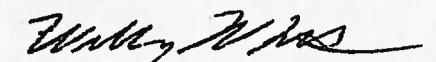
WITNESS:

CSX TRANSPORTATION, INC.


_____
Louis E. Renjel, Jr.
Vice President, Strategic Infrastructure
Initiatives

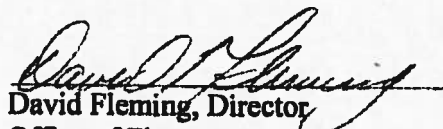

WITNESS:

CSX INTERMODAL TERMINALS, INC.


_____
Wilby Whitt
President

FUNDING AVAILABILITY:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:


David Fleming, Director
Office of Finance
Assistant Attorney General



Maryland Department of Transportation
The Secretary's Office

January 15, 2013

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Darrell B. Mobley
Acting Secretary

Leif A. Dormsjo
Acting Deputy Secretary

The Honorable Ray LaHood
Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington DC 20590

Dear Secretary LaHood:

The purpose of this letter is to inform you that the Maryland Department of Transportation (MDOT) and CSX Transportation Inc. and its affiliates (CSX) have identified a site for the Baltimore-Washington Rail Intermodal Facility in Baltimore City and that federal funds will no longer be sought for the project.

In March 2011, MDOT and CSX identified four candidate sites in suburban counties of Central Maryland for a new intermodal container transfer facility (ICTF) capable of handling double-stack intermodal trains. Since federal funds were anticipated for construction, you assigned the Federal Highway Administration (FHWA) as the lead federal agency and the Federal Railroad Administration (FRA) as a cooperating agency for the National Environmental Policy Act (NEPA) review in November 2011.

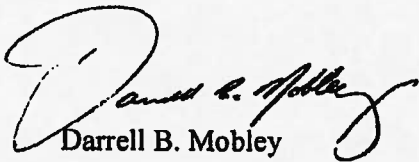
In order to reduce development costs and accelerate project delivery, CSX evaluated the feasibility of constructing the new ICTF on existing CSX property. Following an investigation period during the summer and fall of 2012, CSX determined that a scaled down ICTF could be built at their Mount Clare Yard in southwest Baltimore City. Since the Mount Clare Yard is owned by CSX and already used for railroad activities, the cost of redeveloping the site into a double-stack ICTF is much less expensive than the Central Maryland sites. MDOT and CSX are therefore able to fund the project entirely with state and private funds, without federal assistance. As such, we believe that FHWA and FRA no longer have a role under NEPA for this project.

At this time, MDOT and CSX have ended all investigations at the original four candidate sites (Beltsville, Hanover, Jessup and Montevideo) and are focusing all planning activities to the Mount Clare Yard site. Our current schedule is to have the Mount Clare Yard facility operational in May 2015. This date coincides with the opening of the expanded Panama Canal and the completion of CSX's National Gateway double-stack clearance project.

The Honorable Ray LaHood
Page Two

Thank you for your continued assistance. If you should need additional information, please contact Mr. Leif Dormsjo, MDOT's Acting Deputy Secretary at 410-865-1006 or by email at ldormsjo@mdot.state.md.us. Of course, please do not hesitate to contact me directly.

Sincerely,



Darrell B. Mobley
Acting Secretary

cc: Mr. Victor M. Mendez, Administrator, FHWA
Mr. Gregory K. Murrill, Administrator, FHWA, DelMar Division
Mr. John D. Porcari, Deputy Secretary, U.S. Department of Transportation
Mr. Joseph C. Szabo, Administrator, FRA
Mr. Leif A. Dormsjo, Acting Deputy Secretary, MDOT